

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
HALLIE NELL STONE,)	Case No. 92-01383
)	(Chapter 7)
)	
Debtor.)	
_____)	
—)	
)	
HALLIE NELL STONE,)	
)	
)	
Plaintiff,)	Adversary Proceeding
)	No. 97-0034
v.)	
)	
WILLIAM DOUGLAS WHITE, <u>et</u>)	
<u>al.</u> ,)	
)	
Defendants.		

DECISION REGARDING DISMISSAL OF
CLAIMS AGAINST WILLIAM DOUGLAS WHITE

William Douglas White has moved for dismissal of the complaint as to him.¹ White's motion will be granted.

I

As the caption of this proceeding indicates, Hallie Nell Stone is the debtor in a chapter 7 case pending in this court. William Douglas White is the duly appointed chapter 7 trustee in that case. In this adversary proceeding, Stone has sued

¹ The court has already dismissed the complaint as to the other defendants.

White based on his allegedly improperly seizing and selling assets belonging to her that had become property of the chapter 7 estate. Stone also sued two other defendants ("the Federal Defendants"): the United States Marshal, who executed a writ to take possession of the Watergate apartment unit that had become property of the estate, and the United States Trustee who has oversight duties with respect to White as a chapter 7 panel trustee.

II

The court first addresses whether there is subject matter jurisdiction in this proceeding. In dismissing the proceeding as to the Federal Defendants, the court assumed that there was subject matter jurisdiction under 28 U.S.C. § 1334(b) and proceeded to dismiss the matter because suit was plainly precluded by the Federal Tort Claims Act.² The question

² Section 1334(b) provides:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

The dismissal of the Federal Defendants was based on the required substitution of the United States as the defendant (28 U.S.C. §§ 2679(b)(1), 2679(d)(1)) and, with respect to the United States, the failure of the plaintiff to exhaust her administrative remedies under the Federal Tort Claims Act, 28 U.S.C. § 2675(a), not on the basis that subject matter

deserves closer scrutiny than previously accorded it in the proceeding.³ The question of subject matter jurisdiction over the claims against the trustee (discussed in part A, below) presents a somewhat easier question than that of subject matter jurisdiction over the Federal Defendants (discussed in part B, below).

A.

Under the doctrine of Barton v. Barbour, 104 U.S. 126 (1881), a liquidating trustee such as White may not be sued in a forum other than the bankruptcy court without the bankruptcy court's authorization. In re Linton, 136 F.3d 544, 545 (7th Cir. 1998); Lebovits v. Scheffel (In re Lehal Realty Assocs.), 101 F.3d 272 (2d Cir. 1996). In Lehal Realty, the district court ruled that any suit against the trustee for alleged breach of duty in connection with the administration of the estate should be heard in the bankruptcy court or, if necessary to preserve the right to a trial by jury, in the district court.

jurisdiction was wholly lacking under 28 U.S.C. § 1334(b). See Order Denying Four Motions for Leave to Appeal In Forma Pauperis, Directing Clerk to Transmit Motions . . . , and Making Recommendation to District Court Regarding Disposition of Appeals at pp. 6-8.

³ The court's order of dismissal as to the Federal Defendants was made a final order, but the appeal of that order is still pending.

101 F.3d at 275. In sustaining the district court's view, the court of appeals observed:

We have held that there is no "question that a trustee in bankruptcy may be held personally liable for breach of his fiduciary duties." In re Gorski, 766 F.2d at 727 (citing Mosser v. Darrow, 341 U.S. 267 (1951)). In Gorski, we noted that in "the usual case, a surcharge is imposed [by the bankruptcy court] on the fiduciary in the amount of the actual or estimated financial harm suffered by either the creditors or the estate and is payable accordingly." 766 F.2d at 727.

Id. at 276.

The court concludes that there is jurisdiction over the claims against the chapter 7 trustee. Sanders Confectionery Products, Inc. v. Heller Financial, Inc., 973 F.2d 474, 483 n.4 (6th Cir. 1992), cert. denied, 506 U.S. 1079 (1993) ("The claims against the trustee Alix, however, would be core proceedings. While the specific causes of action, such as RICO, exist independently of bankruptcy cases, an action against a bankruptcy trustee for the trustee's administration of the bankruptcy estate could not. All claims against Alix related to his conduct during the FSI bankruptcy, and should be considered core proceedings."); Berquist v. Felland (In re O-Jay Foods, Inc.), 1991 WL 378164, * 8 n.7 (D. Minn. 1991)(bankruptcy court recommendation adopted by district court)("Under a common-sense reading of the phrase 'arising in,' an action for damages against an operating trustee

premised on allegations of breach of official duties fairly falls within the scope of the district court's jurisdiction, under § 1334(b)." ⁴); M.A. Baheth & Co. v. Schott (In re M.A. Baheth Constr. Co.), 118 F.3d 1082 (5th Cir. 1997)(action for damages from trustee and surety on trustee's bond for alleged wrongful acts in administering estate were at the very least "related to" the bankruptcy case); Walsh v. Northwestern Natl. Ins. Co. (In re Ferrante), 51 F.3d 1473, 1476 (9th Cir. 1995)("Because this case evokes the Bankruptcy [Code's] imposition of duties on trustees to administer estate property and a surety's liability on its bond for benefit of the estate, it cannot be gainsaid that it involves a core issue." (citing In re American Solar King, 142 B.R. 772, 773 (Bankr. W.D. Tex. 1992))). See Robinson v. Mich. Consolidated Gas Co., 918 F.2d 579, 586 (6th Cir. 1990)("It is well settled [based on ancillary jurisdiction] that 'actions against a receiver arising out of his conduct of the receivership

⁴ The court reasoned that, factually, the counterclaim against the trustee "'arose' in Debtor's Chapter 11 case and could not have 'arisen' outside that case; absent his court-approved appointment, valid and final or not, [the trustee] could not have even purported to assume control over Debtor's business and assets" and that, legally, the counterclaim "'arose' in the bankruptcy case; [the trustee] performed all of the acts in question while performing the duties of a court-approved fiduciary with specific statutory empowerment by virtue of Debtor's status in bankruptcy and this Court's order for his appointment."

business may be brought in the appointing court even though there may not be any independent grounds for asserting federal jurisdiction.' C. Wright & A. Miller, Federal Practice and Procedure § 2985 at 45; see also Diners Club, Inc. v. Bumb, 421 F.2d 396, 398-401 (9th Cir. 1970)". See also Yadkin Valley Bank & Trust Co. v. McGee, 819 F.2d 74 (4th Cir. 1987)(suit by creditors against trustee for negligence was entertained in bankruptcy court without any suggestion that there was no jurisdiction). But see Torkelsen v. Maggio (In re The Guild and Gallery Plus, Inc.), 72 F.3d 1171 (3d Cir. 1996)(claim against trustee relating to his failure to turn over bailed (and hence non-estate) property did not come within § 1334(b))(questioned in Norton, Bankruptcy Law Practice, § 4:21 n. 71.6 because recovery against trustee could have impact on estate--presumably Norton means as an administrative claim by the trustee to be reimbursed for a reasonable expense of liquidating the estate).

B.

The issue of § 1334(b) jurisdiction is more difficult with respect to the Federal Defendants.⁵ The district court

⁵ The issue is largely academic because the Federal Tort Claims Act bars the proceeding against the Federal Defendants in any event. But the issue of whether the Federal Tort Claims Act applies need only be reached if the district court had § 1334(b) jurisdiction to refer to the bankruptcy court.

would have had jurisdiction, apart from § 1334(b), over a complaint against the United States (standing in place of the Federal Defendants) properly filed under the Federal Tort Claims Act. But the jurisdiction that Stone invoked was the bankruptcy jurisdiction of the district court under § 1334(b) which has been referred to the bankruptcy court under 28 U.S.C. § 157(a) and Local District Court Rule 601. Section 157(a) permits referral of bankruptcy cases and "any or all proceedings arising under title 11 or arising in or related to a case under title 11." This quoted language is practically identical to § 1334(b) (quoted above in footnote 2). Having invoked the limited jurisdiction referred to the bankruptcy court, Stone is limited to that jurisdiction in seeking to press her claims.

Although the claims against the Federal Defendants arose in connection with the bankruptcy case, they would have no impact on the administration of the estate unless the Federal Defendants could cross-claim against the estate for indemnification. Whether such a right would exist is uncertain. That uncertainty alone--the conceivable impact on the estate--would warrant finding that the claims are related to the case. If no such right of indemnification exists, the claims could have no impact on the estate, and they would not

come within the "related to" jurisdictional prong of § 1334(b) because "it is the relation of dispute to estate, and not of party to estate, that establishes [such] jurisdiction."

Elscint, Inc. v. First Wis. Fin. Corp. (In re Xonics, Inc.), 813 F.2d 127, 131 (7th Cir. 1987)(no jurisdiction over dispute by two creditors over who was entitled to property that was no longer estate property unless resolution of that dispute would impact the amounts to be distributed to other creditors). See also In re Boone, 52 F.3d 958 (11th Cir. 1995)(no § 1334(b) jurisdiction over claim by debtor against bank that arose post-petition even though claim depended on whether bank had a lien, an issue that would, as well, affect administration of bankruptcy estate; nor would the outcome of the claim affect the debtors' rights under the Bankruptcy Code).

Did the claims "arise under title 11" or "arise in" the bankruptcy case? As the Fifth Circuit has explained:

Congress used the phrase "arising under title 11" to describe those proceedings that involve a cause of action created or determined by a statutory provision of title 11 The meaning of "arising in" proceedings is less clear, but seems to be a reference to those "administrative" matters that arise only in bankruptcy cases. In other words, "arising in" proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.

In re Wood, 825 F.2d 90, 96-97 (5th Cir. 1987) (footnotes omitted).

Stone's claims against the Federal Defendants are not founded on the Bankruptcy Code (title 11 U.S.C.) and hence do not arise under title 11. The United States Trustee's duties are set forth in 28 U.S.C. § 586, not in title 11. Similarly, the claims against the United States Marshal do not arise under title 11.

Nevertheless, the claims do "arise in" the bankruptcy case. The Marshal was carrying out an order of the bankruptcy court to evict the debtor, a role that of necessity could arise only in the bankruptcy case pursuant to an order of the bankruptcy judge assigned to the case. Just like the trustee, the Marshal was serving as an officer of the court in executing its process. Similarly, the United States Trustee was supervising the chapter 7 trustee's performance, a function that could only arise in a bankruptcy case because the United States Trustee's duties are confined to bankruptcy cases. Despite the reasoning in Guild and Gallery, 72 F.3d at 1178, this court believes, based on the reasoning in Linton and in Lehal Realty, that a matter may "arise in" a case when the parties against whom the claim is asserted have acted as the officer of the court in executing process or as the statutory officer charged with supervising the chapter 7 trustee.

The protection of the Barton doctrine extends to counsel for the trustee. Allard v. Weitzman (In re DeLorean Motor Co.), 991 F.2d 1236, 1241 (6th Cir.1993); Hallock v. Key Federal Savings Bank (In re Silver Oak Homes, Ltd.), 167 B.R. 389, 394-95 (Bankr. D. Md. 1994). By analogy it should extend to the Federal Defendants here. The bankruptcy court has an institutional interest in insuring that the officers who assist in the administration of the case are not subjected to frivolous lawsuits elsewhere. Cf. Lehal Realty, 101 F.3d at 277. Implicit in that rationale is that the claims against the Federal Defendants can and frequently ought to be heard in the bankruptcy court as ancillary to § 1334(b) jurisdiction.

If the district court itself had heard the bankruptcy case and the Federal Defendants had been sued in the district court, it would be fairly evident that the district court's bankruptcy jurisdiction extends to complaints against the acts of these officers arising in the course of the bankruptcy case. The referral of the bankruptcy case to the bankruptcy court does not change the analysis. Although it is a closer question than with respect to the trustee, the court thus concludes that there was § 1334(b) "arising in" jurisdiction as to the Federal Defendants.

III

The court now turns to the merits of Stone's complaint against the trustee.

White caused the seizure of the property pursuant to a turnover order entered April 14, 1997. Stone alleges that the turnover order was invalid because an adversary proceeding was required. Her allegation is wrong. While F.R. Bankr. P. 7001(1) generally requires an adversary proceeding to be commenced if the proceeding is one to recover money or property, it specifically excepts "a proceeding to compel the debtor to deliver property to the trustee" from this requirement. A motion thus suffices.

Stone next complains that personal property belonging to her was taken or thrown away when her Watergate apartment was seized. But the turnover order required Stone to vacate the premises. The Marshal was required to execute the writ of restitution issued to him and that included removing any personal property of Stone that she had neglected to remove. Usually the Marshal simply places personal property on the curb when executing a writ of restitution. Stone does not allege that anything more than this occurred. She was given fair warning to vacate and has only herself to blame for the property being removed by the Marshal.

Stone next alleges that a judgment was required in order

for White to obtain a writ for possession of the properties. But the turnover order was a judgment albeit not styled such. In any event, the court had authority under 11 U.S.C. § 105 to issue orders necessary to enforce the provisions of the Bankruptcy Code, including the trustee's duty to liquidate the assets of the estate.

Stone further alleges that the turnover order was a violation of the bankruptcy law, but has alleged no basis for that assertion. In any event, the turnover order was an appealable order and Stone's remedy was to appeal; she is precluded from attacking the validity of the order now.

Stone next alleges that the trustee sought the turnover in order to defraud her and the estate and to keep the cash he obtained thereby. The fraud has not been pled with particularity. In any event, the trustee has filed a final account accounting for all of the proceeds of properties he sold. The sales prices of the properties are all a matter of public record pursuant to the orders of this court approving the sales.

Stone next alleges that White had no right to sell the properties he sold. But the orders of sale have adjudicated that issue.

Stone next alleges that she is entitled to an accounting

to see what happened to the substantial funds that White received. The trustee has filed a final report and account. After hearing that matter and giving Stone an opportunity to object, the court has approved the final report and account. Stone is not entitled to any further accounting than that.

Stone finally contends that only the District of Columbia Landlord and Tenant Court can issue writs of possession. But 11 U.S.C. § 105 plainly is sufficient authority for this court to issue any writ necessary to the liquidation of the estate.

Accordingly, the court will dismiss this proceeding as to White on the merits.

Dated: November 4, 1998.

S. Martin Teel, Jr.
United States Bankruptcy Judge

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